

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF MARYLAND

NANCY J. WHALEN, *

Plaintiff

*

vs.

* CA No. MJG-02-CV-191

NUCAR CONNECTION, INC.,

et al., *

Defendants

* * * * *

The deposition of ARLENE DUNN was held on

Thursday, October 3, 2002, commencing at 11:55 a.m., at

the offices of Mudd, Harrison & Burch, 105 West

Chesapeake Avenue, Towson, Maryland 21204, before Susan

E. Smith, a Notary Public.

* * * * *

APPEARANCES: PAUL D. BEKMAN, Esquire

On behalf of Plaintiff

DOUGLAS W. BISER, Esquire

On behalf of Defendant

NuCar Connection, Inc.

C. RUSSELL FIELDS, Esquire

On behalf of Defendant Donald Temper

DAVID F. RYDER, Esquire

On behalf of Defendant Arlene Dunn

ALSO PRESENT: GAIL M. CHICKERSKY

Reported By: Susan E. Smith, RPR

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1	* * * * *	
2	ARLENE DUNN,	1 for Custom?
3	called as a witness, having been first duly sworn to	2 A NuCar, Inc. NuCar Connection, Inc.
4	tell the truth, the whole truth, and nothing but the	3 Q When did you leave NuCar Connection, Inc.?
5	truth, was examined and testified as follows:	4 A January of 2001.
6	EXAMINATION BY MR. BISER:	5 Q What was your position at NuCar Connection?
7	Q Ms. Dunn, my name is Douglas Biser. I	6 A Site controller.
8	represent NuCar in this case, and I'm going to take	7 Q Why did you leave?
9	your deposition, asking you some questions. If at any	8 A The position was dissolved.
10	time you need a break, let me know. If you don't	9 Q What were your duties or responsibilities
11	understand the question, I would be glad to repeat it	10 as the site controller?
12	for you.	11 A I worked with the general manager, James
13	Could you please state your full name and	12 Capron (phonetic), and was responsible for duties he
14	address?	13 assigned.
15	A Barbara Arlene Dunn, 24 Sandy Run, Elkton,	14 Q What were those duties that he assigned to
16	Maryland, 21921.	15 you on an ongoing basis?
17	Q How long have you lived at that address?	16 A To review expenses, troubleshoot any weak
18	A Fourteen years.	17 areas.
19	Q Who do you live there with?	18 Q How long were you the site controller?
20	A Myself, no one.	19 A Approximately two years.
21	Q By whom are you presently employed?	20 Q When approximately did you start your
		21 position as a site controller?
	Page 3	Page 5
1	A Custom Sportswear, Inc., Blackwood, New	1 A I don't remember exactly. I think it was
2	Jersey.	2 March of -- February or March of '98. I'm not sure on
3	Q How long have you worked there?	3 that.
4	A Not quite a year.	4 Q And from approximately February or March of
5	Q What is your position with them?	5 '98 until you left in January 2001, did you work at one
6	A Sales representative.	6 location?
7	Q Do you work out of your home?	7 A Yes.
8	A Sometimes.	8 Q What location was that?
9	Q Do you have an office in Blackwood, New	9 A 174 North Dupont Highway, New Castle,
10	Jersey?	10 Delaware.
11	A Yes.	11 Q And that was the dealership?
12	Q And do you commute from your home --	12 A Yes.
13	A Yes.	13 Q Now, your duties you explained as reviewing
14	Q -- to the business in Blackwood?	14 expenses and troubleshooting. Let's just take a look
15	A Yes.	15 for a minute at the reviewing expenses. Tell me what
16	Q As a sales rep presently, what are your	16 it is you would actually do, physically, to review
17	duties or responsibilities?	17 expenses.
18	A Present a sportswear program for elementary	18 A For instance, if receivables are high in a
19	schools consisting of imprinted sportswear,	19 certain area, to bring that to the attention of Mr.
20	sweatshirts, T-shirts, sweat pants.	20 Capron. That's an instance.
21	Q Where did you work before you went to work	21 Q Okay. Would that be all of the expenses

	Page 6	Page 8
1 for that dealership that you would review?		1 potential customers features of vehicles and that type
2 A Yes.		2 of thing?
3 Q And then the second area of duties or		3 A That's correct, not my responsibility.
4 responsibilities you would say would be troubleshooting		4 Q Essentially your duties and
5 the weak areas. Can you tell me what those areas were?		5 responsibilities were more bookkeeping and
6 A Warranty is also a receivable, for instance		6 administrative; is that a fair statement?
7 if there were outstanding warranty receivables, or any		7 A That's fair.
8 trends that were set. I also did the same with sale		8 Q With no responsibility for sales?
9 dollars that were leaped for maybe used or new cars		9 A None.
10 sales. We'd just discuss that.		10 Q Okay. Now, let me refer back to the time
11 Q Did any part of your job require you to		11 about July of 2000. Were your responsibilities during
12 sell vehicles to the public or to customers?		12 that period of time as the controller consistent with
13 A No.		13 what you've already testified?
14 Q If someone would come to you, a friend,		14 A Yes.
15 acquaintance, or anyone, and ask you or show interest		15 Q Now, at the time of this accident you were
16 in purchasing a vehicle from NuCar, what would you do?		16 driving a demonstrator vehicle?
17 A Refer them to a salesperson or a sales		17 A Yes, I was.
18 manager, someone in that position for that particular		18 Q When had you first been given a
19 vehicle.		19 demonstrator or allowed to use a demonstrator vehicle?
20 Q And would that be the end, then, of your		20 A Through the course of negotiations to be
21 involvement for that kind of inquiry?		21 employed at the New Castle site, it was part of the pay
	Page 7	Page 9
1 A Yes.		1 plan.
2 Q By the way, during the years that you were		2 Q Was that when you first were employed by
3 employed at NuCar, did that ever occur?		3 them --
4 A Yes.		4 A Yes.
5 Q How often would that have occurred?		5 Q -- or did this come about when you were
6 A If people I knew or friends I saw knew I		6 given the responsibility of site controller?
7 worked at NuCar and were interested in a particular		7 A No, when I was first employed by them.
8 brand, I would refer them to a salesperson.		8 Q Let's start off, then, when were you first
9 Q You had no authority to deal with the		9 employed?
10 public and make representations regarding vehicles that		10 A In '86, October.
11 were for sale; is that correct?		11 Q Why don't you take us through just, as best
12 A That's correct.		12 you can remember, your employment history, starting in
13 Q You couldn't negotiate a sale --		13 1986.
14 A No.		14 A There was a gentleman who was the
15 Q -- with a prospective customer, correct?		15 controller at that time. His name was Tom
16 A That's correct.		16 Paccaeanicia.
17 Q You couldn't give quotes or prices for		17 Q I'm going to ask you to spell that.
18 vehicles, correct?		18 A I have no clue. Paccaeanicia.
19 A That's correct.		19 MR. BISER: Gail, could you help us with
20 Q And you weren't authorized or delegated		20 that? Do you know the spelling of his name? Does
21 with the responsibility of explaining to the public or		21 anyone mind if we ask her?

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1 MS. CHICKERSKY: P-A-C-C-A-E-A-N-I-C-I-A.	1 Q Is that correct?
2 First name is Thomas.	2 A That's correct.
3 MR. BISER: We're going to have a test on	3 Q What different responsibilities did you
4 that later.	4 have or different duties did you have when your
5 Q Okay. So your first -- we'll call him Tom.	5 position went from office manager to site controller,
6 A All right.	6 if any?
7 Q You first worked under Tom, correct?	7 A I was less involved with the day-to-day and
8 A That's correct.	8 more involved with each departmental. It wasn't just
9 Q And how long did you work under him?	9 the accounting.
10 A Until Gail arrived, and then -- well, no,	10 Q Going back again to the time when you were
11 then it was, after Tom it was Joy, and I can't think of	11 hired, first hired by or started to work for NuCar as
12 her last name, and then Gail. It wasn't a very long	12 the site controller, you said at that time a part of
13 time span between them.	13 your compensation package included use of a
14 Q When you were employed by Tom, and then	14 demonstrator vehicle?
15 Joy, and then Gail, what was your position?	15 A When I was interviewed for the position.
16 A Office manager.	16 Q Who interviewed you?
17 Q And what were your duties or	17 A Tom.
18 responsibilities as the office manager?	18 Q And what did your compensation package
19 A Day-to-day operations, clerical,	19 consist of?
20 accounting, and to help produce financial statements	20 A A salary and a demo.
21 for the different franchises.	21 Q When you were hired, then, what were you
Page 11	Page 13
1 Q As the office manager, did you have any	1 told about the use of the demo?
2 responsibilities or role in sales or promotions?	2 A At that time, I didn't own a car. Or I had
3 A No, not firsthand.	3 a car. I was given a demo as my car, and they knew I
4 Q Now, when you were given -- did you work as	4 was driving that. That was the only vehicle I was
5 the office manager then until you were promoted to site	5 driving.
6 controller in February or March of, was that '99? I'm	6 Q And for the time that you worked for NuCar
7 sorry, I can't read my own notes. Did you say February	7 until you left in 2001, did you continue then to have
8 or March?	8 as part of your compensation package a demo vehicle?
9 A I'm not sure of the date --	9 A Yes.
10 Q Right.	10 Q Were there any restrictions placed on your
11 A -- or the year.	11 use of the demo vehicle.
12 Q But you think you were the site	12 A No.
13 controller --	13 Q Now, we've seen earlier today a
14 A '98 maybe.	14 demonstrator -- it's called a demonstrator plan. It
15 Q Just to put it in some kind of time frame,	15 was previously marked as Exhibit 2, dated November 11,
16 you think you were site controller in that position for	16 1991. Can you take a look at that for me?
17 approximately two years before you left, correct?	17 A Yes.
18 A Yes, two or three years.	18 Q Is that your signature?
19 Q And you were office manager up until you	19 A Yes, it is.
20 became the site controller?	20 Q Do you know whether there were ever any
21 A Yes.	21 other documents that you signed that addressed in any

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1 way the use of the demonstrator vehicle?
 2 A No.
 3 Q Is this the only one?
 4 A This is the only once.
 5 Q Now, you say that there were no
 6 restrictions put on the use of your demonstrator
 7 vehicle. Do you know whether, after you signed this
 8 document on November 11, 1991, as to whether there were
 9 ever any additions or modifications to this agreement
 10 in any way?
 11 A I often had permission to drive outside of
 12 the 50-mile radius since it was the only vehicle that I
 13 had --
 14 Q Okay.
 15 A -- to visit my family. When I went on
 16 vacation, I would take a demo.
 17 Q After this agreement was signed, did anyone
 18 ever deny to you permission that you requested for use
 19 of the vehicle outside the 50-mile radius or any other
 20 requests?
 21 A No.

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Page 17

1 Q Other than the 50-mile radius restriction,
 2 were there any other restrictions that you know were on
 3 your use of the demo that you had to request exception
 4 to? Indicating no?
 5 A No.
 6 Q I know what you're saying, but she's got to
 7 type it down and record it, so you have to answer
 8 verbally.
 9 A No.
 10 Q Now, let's talk about the vehicle that was
 11 involved in the accident that we're here about today.
 12 That was a Chevrolet Camaro?
 13 A Yes.
 14 Q How long had you been driving that vehicle?
 15 A For 4,000 miles. I don't know the time
 16 span.
 17 Q It had approximately 4,000 miles on it at
 18 the time of the accident; is that correct?
 19 A That's correct.
 20 Q Had you been driving that vehicle since it
 21 was delivered to the dealership, do you know?

1 A To the best of my knowledge, yes.
 2 Q Best of your recollection. What dealer
 3 designations did the vehicle have on it, if any, at the
 4 time of the accident?
 5 A I don't understand.
 6 Q Were there any -- were there any signs,
 7 writings, placards, descriptions placed on either the
 8 license plate or the vehicle itself that indicated who
 9 was the owner of the vehicle?
 10 A There was a NuCar sticker on the back of
 11 the car. The license plate had a NuCar frame.
 12 Q Just let me interrupt you one second. The
 13 sticker that you're talking about, I know that a lot of
 14 dealerships place on the back of vehicles that they
 15 sell a little designation of the dealership. Is that
 16 the type of sticker that you're talking about?
 17 A Yes.
 18 Q So that's the type of sticker that's placed
 19 on all vehicles that NuCar handles, not just
 20 demonstrators?
 21 A That's correct.

1 Q So if I was to go in and buy a NuCar car, a
 2 new car from Nucar, a Chevrolet Camaro, for instance,
 3 and I purchased it and drove away, it would have that
 4 NuCar name somewhere on the back; is that correct?
 5 A I would guess. I don't know exactly.
 6 Q All right. So that wasn't something
 7 peculiar or particularly done just for demonstrator
 8 vehicles, correct, as far as you know?
 9 A As far as I know.
 10 Q All right. Now, the other designation of
 11 NuCar you say was on the license plate? Did you say
 12 license plate?
 13 A Frame.
 14 Q License plate frame. In other words, the
 15 holder of the license plate; is that correct?
 16 A That's correct.
 17 Q Other than that, are there any other signs
 18 or indicia of ownership placed on or around that
 19 vehicle at the time of this accident?
 20 A There's a dealer tag on the car.
 21 Q Anything else?

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1 A A window sticker on the glove box.
 2 Q That's the Moroney sticker?
 3 A That's correct.
 4 Q And that's the sticker that's placed,
 5 generally you see them when they're on the lots, on the
 6 windows themselves?
 7 A Right.
 8 Q You did not have that on the window, that
 9 was in the glove box?
 10 A Yes.
 11 Q Is that generally how, when you drove a
 12 demonstrator, where the Moroney sticker would be?
 13 A It would stay on the car if it was not
 14 visible. It didn't harm my visibility.
 15 Q Right. Okay. So the one in question was
 16 in the glove box itself; is that correct?
 17 A Yes.
 18 Q With regard to this vehicle, do you know
 19 whether this particular vehicle, the Chevrolet Camaro
 20 that was in this accident, was ever shown to any
 21 customer during the period of time that you were using

1 car was available to see, but it was not there just to
 2 see.
 3 Q Okay. All right. Did you ever have
 4 occasion at any time during your employment with NuCar
 5 to have a person come up to you and say, I'd like to
 6 buy that vehicle, or express interest in purchasing the
 7 vehicle that you were driving?
 8 A Yes.
 9 Q When did that occur?
 10 A Often.
 11 Q How often would that have occurred?
 12 A Four or five times a year.
 13 Q When that occurred, did you have any
 14 authority to speak for the dealership with respect to
 15 selling the vehicle or engaging, entering into a
 16 contract of sale?
 17 A No.
 18 Q When inquiries were made such as that, what
 19 were you to do, or what did you do?
 20 A On some occasions I had salesmen's business
 21 cards. I would talk about the car, saying that it was

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Page 21

1 it?
 2 A I don't have that knowledge.
 3 Q You have no recollection of that?
 4 A I have no recollection of that.
 5 Q All right. While you were driving this
 6 vehicle, did you ever have occasion to -- was it part
 7 of your responsibilities to show this vehicle to any
 8 prospective customers?
 9 A It was available to see. It was in a
 10 designated parking spot. If I went somewhere on an
 11 occasion, it was clean. It was available for anybody
 12 to look at.
 13 Q I understand that it was available to look
 14 at, but were you ever requested to show it to anyone?
 15 A No.
 16 Q Did you ever have occasion at any time
 17 while you were employed by NuCar and driving a
 18 demonstrator vehicle, did you ever have occasion to
 19 show a vehicle for sales purposes to any person or any
 20 prospective customer?
 21 A I went to a golf tournament once and the

1 available for sale and they could contact the sales
 2 rep.
 3 Q So what you would have to do, then, is
 4 refer that person to the sales organization or office
 5 or person?
 6 A That's correct.
 7 Q And so any sales would be done through the
 8 sales force; is that a fair statement?
 9 A Yes.
 10 Q Do you know whether that ever occurred with
 11 regard to this Chevrolet Camaro? Had anyone ever
 12 approached you at any time expressing interest in
 13 purchasing that vehicle or a like vehicle that you can
 14 remember?
 15 A I have no recollection.
 16 Q Just to confirm, the use of the vehicle was
 17 part of your compensation, and as such there was income
 18 attributed to you for the use of the vehicle; is that
 19 correct?
 20 A That's correct.
 21 Q On which you paid income taxes?

	Page 22	Page 24
1	A That's correct.	
2	Q Let me refer your attention now to July 4	1 Q They had a boat, okay. Now, this trip was
3	3 of 2000. That's the date of the accident that we're	2 not required or part of your duties with NuCar,
4	4 here about today; is that correct?	3 correct?
5	A That's correct.	4 A That's correct.
6	Q At the time of this accident, were you on	5 Q How long have you known Nancy Whalen?
7	7 your own business at that time?	6 A Three years.
8	A Yes.	7 Q And where had you met her?
9	Q Where were you coming from?	8 A Through mutual friends years prior to that.
10	A Rock Hall, Maryland.	9 We had met off and on on occasion prior to that.
11	Q And where were you going?	10 Q So when you say you've known her for three
12	A To my home in Elkton.	11 years, the three years prior to the accident or prior
13	Q And what time of day was it?	12 to today?
14	A About 11:30 p.m.	13 A Three years prior to today. I met her on
15	Q And Nancy Whalen was a passenger in your	14 occasion prior to that, three years ago, so I had met
16	16 vehicle?	15 her earlier.
17	A Yes.	16 Q Okay. So you knew her, but not well?
18	Q She was the right front seat passenger?	17 A Right.
19	A Yes.	18 Q Is that correct? What is your relationship
20	Q And you were driving?	19 with Nancy Whalen?
21	A Yes.	20 A She's my friend.
		21 Q Are you good friends?
	Page 23	Page 25
1	Q No passengers in the rear of the vehicle?	1 A Yes.
2	A No.	2 Q Are you best of friends?
3	Q What had you been doing in Rock Hall?	3 A Yes.
4	4 Where had you been?	4 Q Still?
5	5 A I had been to visit Nancy's sister and	5 A I would think so.
6	6 brother-in-law and their children at the Sailing	6 Q Tell me how the accident happened.
7	7 Emporium, which is a marina. And we were to have	7 A The other driver was in my lane, and I
8	8 dinner, watch the fireworks that were sponsored by the	8 steered to avoid getting hit head-on. I steered left
9	9 marina.	9 to avoid getting hit head-on.
10	10 Q And what time did you arrive,	10 Q Now, as I understand it, the accident
11	11 approximately, that evening at Nancy's sister's?	11 happened on Route 213?
12	12 A Approximately 7.	12 A That's correct.
13	13 Q And what were your activities then from the	13 Q Is that correct? And you would have been
14	14 time you arrived until you all left?	14 traveling from White Hall to home, you would have been
15	15 A We ate, listened to the dance band that was	15 going northbound?
16	16 there, watched the fireworks, and left.	16 A From Rock Hall, home, it would be
17	17 Q So you stayed at the marina?	17 northbound.
18	18 A Yes.	18 Q Did I say White Hall? I'm sorry, Rock
19	19 Q You didn't visit Nancy's sister at her	19 Hall. You would have been traveling northbound. And
20	20 house?	20 213 is, as I recall in that area -- I'm not very
21	21 A No. They had a boat there at the marina.	21 familiar with it but I am somewhat -- is one lane